

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
2000 Biennial Regulatory Review ) WT Docket No. 01-14  
Spectrum Aggregation Limits ) FCC 01-28  
for Commercial Mobile Radio Services )

**COMMENTS  
OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA) hereby submits comments in response to the Federal Communications Commission's (the Commission's) request for comment<sup>1</sup> on whether the Commercial Mobile Radio Services (CMRS) spectrum cap and the cellular cross-interest rule should be eliminated, modified or retained, based on the public interest standard set forth under Section 11 of the Communications Act.

**I. INTRODUCTION**

NTCA is a national trade association representing more than 500 small and rural local exchange carriers.<sup>2</sup> All of NTCA's members are "rural telephone companies" as defined in the Telecommunications Act of 1996 (the Act)<sup>3</sup>. Most of NTCA's members also provide wireless service in rural areas.

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<sup>1</sup> In the Matter of 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, WT Docket No. 01-14 (rel. January 23, 2001.)

<sup>2</sup> About half of NTCA's members are organized as subscriber owned cooperatives.

<sup>3</sup> 47 U.S.C. § 153(37).

NTCA applauds the Commission's efforts to rid the telecommunications industry of unnecessary rules and regulations while maintaining its commitment to meaningful economic competition. NTCA recognizes the good intentions behind the original imposition (and subsequent modification) of the CMRS spectrum aggregation limits, but believes that if the limits are removed, the public interest will best be served if the Commission were to impose conditions to insure that customers in rural areas will have equal access to advanced services.

**II. IF THE CMRS CAP IS LIFTED, THE FCC SHOULD IMPOSE CONDITIONS SO THAT SPECTRUM DOES NOT LIE FALLOW.**

In this Notice of Proposed Rulemaking (NPRM), the Commission reexamines the need for CMRS spectrum aggregation limits as part of the 2000 biennial review of the Commission's telecommunications regulations. Specifically, the Commission seeks comment on whether the CMRS spectrum cap and the cellular cross-interest rule should be eliminated, modified, or retained, based on the public interest standard set forth under Section 11 of the Communications Act.

The main issue currently facing NTCA members is access to spectrum. Despite the mandates in Section 309(j) of the Act<sup>4</sup>, rural telco access has been severely limited by competitive bidding, licensing and service rules that favor the acquisition and hoarding of spectrum by large entities having no interest in rapid deployment in rural areas. Unless carriers in rural areas are able to obtain spectrum, whether through auction or on the secondary market, they will not be

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<sup>4</sup> Section 309(j)(4)(D) of the Communications Act of 1934, as amended, requires the Commission to prescribe regulations to ensure that small businesses and rural telephone companies are given an opportunity to participate in the provision of spectrum-based services.

able to provide advanced wireless services to their customers. This inability of small rural companies to obtain spectrum runs counter the stated goals of Section 309(j), and the resultant denial of available options for advanced services to their customers is clearly contrary to the public interest.

There is considerable evidence that spectrum in rural areas is going unused. The Commission itself, in its November 2000 Notice of Proposed Rulemaking in the matter of the development of secondary spectrum markets<sup>5</sup>, notes that “radio spectrum may be used inefficiently by its current licensees or even lie fallow, especially in rural areas, limiting availability of valuable services to many.”<sup>6</sup> NTCA believes this is largely a result of the licensing and build out rules.

Rural carriers have found it extremely difficult to effectively compete in recent Commission spectrum auctions. In some auctions, for example, the vast size of the service territories makes it virtually impossible for small rural carriers to compete.<sup>7</sup> As these large service territories contain both urban and rural areas, small rural carriers find themselves competing for spectrum at auction with larger companies seeking to serve only the urban markets. Despite having little or no interest in the rural areas, these large companies have the financial resources to be able to bid in and win these auctions. Further, lenient build out

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<sup>5</sup> FCC, Notice of Proposed Rulemaking in the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230 (rel. November 27, 2000)

<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> Licenses in the proposed 747-762 and 777-792 MHz band auction, for example, will be based upon six Economic Area Groupings (EAGs), each comprised of massive geographic areas.

requirements place no pressure upon these large companies to take steps toward providing service in less-populated rural areas.

In other auctions, the high bid prices necessary to win licenses have shut out the small rural carriers.<sup>8</sup> Overall, this latest round of auctions has certainly not resulted in dissemination of licenses “among a wide variety of applicants” as required by Section 309(j)(3)(B). The Commission must find a way to foster the participation in auctions and acquisition of spectrum by rural carriers, which like other small businesses typically have limited financial resources at their disposal. The Act should not be ignored because competitive bidding awards licenses to “deep pockets.” Congress was certainly aware that rural telco providers don’t have unlimited capital at their disposal with which to bid upon crucial spectrum, yet it directed the Commission to design auctions and frame policies in such a way as to ensure their participation in the delivery of wireless services.

As a result of the difficulty many small carriers are experiencing in their efforts to obtain spectrum in rural areas and thus deploy wireless services in those areas, the concept of “meaningful economic competition”—which the spectrum caps were originally intended to ensure—is not the main issue facing rural areas today. Instead, “availability of spectrum” is a much more pressing concern. The rural consumer should have a panoply of options similar to those available in urban areas. Wireless services may be the complement that will work best to achieve this goal, alone or in conjunction with wireline services.

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<sup>8</sup> In the C and F block PCS auction which ended in January 2001, for example, 422 licenses were sold for \$16.8 billion—an average of \$39.9 million per license! None of these licenses were sold to small companies who were not bankrolled by larger entities.

Because rural telcos have a stake in their communities, the availability of current advanced technologies—and eventually 3G services—in rural areas is predicated on the availability of spectrum to those companies who are willing and able to serve these high cost areas<sup>9</sup>. The Commission can take vital steps toward guaranteeing the availability of advanced services to rural America by accompanying any raising or lifting of spectrum caps with other changes in its rules. First, the Commission should license future spectrum according to smaller geographic service territories. This would benefit the rural carriers in several ways. They would no longer be competing with larger entities for huge geographic areas that merely happen to encompass rural areas. It can be expected that the larger entities would instead focus their attention (and their financial resources) upon the more populous and lucrative areas. In addition, since these rural areas would be more expensive to serve and would offer lower overall profit potential, spectrum licenses for these areas would cost less than those in urban areas, putting them within the financial grasp of rural carriers. It is not expected that carriers or other entities would pursue spectrum where it is uneconomic to do so. However, consumers are likely to benefit because there are economies available from pursuing a wireless strategy in conjunction with smaller areas and as a complement to other available technologies.

Second, when a carrier obtains a spectrum license for a geographic area that includes both rural and urban areas, the carrier should be required to partition or disaggregate unused spectrum well before the end of the license

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<sup>9</sup> See Lehman, Dale, “Who Will Serve Rural America?,” The NTCA 21<sup>st</sup> Century White Paper Series, July 2000.

period. In the past, large carriers have shown reluctance to part with unused spectrum. The large carrier may feel that the unused spectrum will be needed in the future, that the investment is worth keeping because the value will increase over time or that the benefits of a deal with small carriers is not worth pursuing. Regardless of the large carriers' motivations, the end result is that residents of those underdeveloped areas are denied access to wireless services, and thus the public interest is not served.

Finally, the Commission should impose strict build out requirements. These requirements would force carriers to take readily identifiable steps toward the provision of service throughout their service territory or risk losing their license at a specified mile post or at renewal time. It would serve to eliminate the large carriers' ability to allow spectrum in less profitable rural areas to lie fallow.

Further, in order to best serve the purpose of bringing spectrum based services to rural areas, NTCA recommends that any build out requirements imposed require that a certain percentage of the geographic area be covered within a specified number of years, rather than a percentage of the population. Population requirements could potentially be satisfied through the provision of service to the region's urban areas only, thus defeating the purpose of a build out requirement. If, however, the requirement were based on geography, there would be a greater chance that both urban and rural areas were being developed. Those holding spectrum would thus be required to "use it or lose it"—take positive steps toward building out their service territories or suffer the

consequences of not having their license renewed, or having the spectrum in the unserved area reclaimed by the Commission for reauction.

### **III. NTCA'S COMMENTS IN RESPONSE TO THE INITIAL REGULATORY FLEXIBILITY ANALYSIS**

Several of NTCA's members are small businesses<sup>10</sup> that currently are or may become licensees in the cellular, broadband PCS and/or SMR services. NTCA's members therefore have a strong interest in the Commission's resolution of the issues at hand. The unconditional raising or lifting of the spectrum cap will likely result in further consolidation within the CMRS industry and diminish the opportunities for smaller entities to provide broadband CMRS service. In order to ensure that small companies have access to spectrum and to ensure that consumers living in rural areas--areas traditionally ignored by large carriers--have access to services, NTCA believes that the Commission should adopt alternatives to its proposed rule changes. These alternatives will help to ensure that small businesses, including NTCA members, have access to spectrum licenses both at auction and in the secondary market.

As is described more fully above, the Commission should license spectrum according to small geographic service territories. Small telecommunications providers have found it incredibly difficult to compete effectively with large carriers in spectrum auctions. The pairing of spectrum

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<sup>10</sup> The Commission now recognizes small incumbent local exchange carriers (ILECs) as small businesses for purposes of Regulatory Flexibility Act (RFA) analysis. A "small business" under RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." As any small ILEC dominance

covering both urban and rural areas drives the price of spectrum up. The raising or lifting of the spectrum aggregation limits may make the problem worse as it will permit large carriers currently at their spectrum limit to continue to outbid smaller carriers at auction. Licensing the spectrum according to smaller geographic areas will allow small carriers interested in serving only rural communities the opportunity to obtain the rural spectrum that large carriers are traditionally not interested in.

In addition to the opportunities at auction, the Commission should make secondary markets a more viable option for small carriers. Requiring the partitioning or disaggregation of spectrum unused by large carriers as described in Section II above will help to free up the spectrum for purchase by small carriers and will accelerate the deployment of services to rural areas.

Also, carriers should be held to strict build out requirements that require carriers to provide service to their entire geographic service territory. As explained *supra*, large carriers should not be permitted to obtain more spectrum while spectrum in the less profitable rural areas lies fallow. A "use it or lose it"

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would not be "national" in scope, the Commission has determined that these carriers fit the definition of small business for the purposes of RFA analysis.

policy towards spectrum will allow the Commission to reclaim unused spectrum and further provide opportunities for small businesses, including NTCA members.

Respectfully submitted,

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April 13, 2001

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in WT 01-14, FCC 01-28 was served on this 13th day of April 2001 by first-class, U.S. Mail, postage prepaid, to the following persons.

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